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No. 80-1735

IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

FEDERAL BUREAU OF INVESTIGATION AND THE UNITED STATES DEPARTMENT OF JUSTICE,
Petitioners,

v.

HOWARD S. ABRAMSON,
Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR *AMICUS CURIAE* FREEDOM OF INFORMATION CLEARINGHOUSE

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BRIEF FOR *AMICUS CURIAE* FREEDOM OF INFORMATION CLEARINGHOUSE

INTEREST OF *AMICUS CURIAE*

The Freedom of Information Clearinghouse is a non-profit organization which was founded in 1972 to assist members of the public and the press in the effective use of the Freedom of Information Act ("FOIA") and other laws granting a right of access to government-held information. The Clearinghouse collects and disseminates information by mail and through speeches, conferences, articles, and testimony before Congressional committees concerning the public's right of access. For persons without a significant financial stake in securing information, it is one of

the few organizations to which [illegible] experienced legal assistance to pursue their right of access in court.

The Clearinghouse is appearing as *amicus curiae* in support of the respondent in this case, with the written consent of the parties, because it believes that the position urged by the Government will seriously undermine the availability of records under the FOIA. The Clearinghouse has represented a number of individuals who have sought access to records which agencies attempted to withhold under Exemption 7 of the Freedom of Information Act, 5 U.S.C. § 552(b)(7), which protects "investigatory records compiled for law enforcement purposes" to the extent that one of six specific harms can be demonstrated. In addition the Clearinghouse offered its technical assistance to Congressional committees which redrafted the FOIA into its current form in 1974 and litigated one of the cases in the D.C. Circuit which Congress overruled in its 1974 amendment to Exemption 7.

STATEMENT

In this case respondent Howard S. Abramson, a professional journalist, is seeking access under the Freedom of Information Act to the deleted portions of certain "name check" summaries and other documents which the FBI submitted to the White House in 1969 in response to a request from White House aide John D. Ehrlichman for information concerning 11 specified individuals (J.A. 29-36).

This case began in 1976 when Abramson filed an FOIA request with the FBI seeking access to information "showing or indicating the transmittal of any document or information from the FBI to the White House, or any White

House aides, for the years 1969 and 1970" concerning eight named individuals. He also asked for copies of the original White House request to the Bureau and a memorandum dated October 6, 1969 from J. Edgar Hoover to John D. Ehrlichman "by which Mr. Hoover transmits 'memoranda' on several individuals to Mr. Ehrlichman" and all information transmitted therewith (Pet. for Cert. 4a-5a [hereinafter "Pet."]).

The Bureau answered that it would not search its files until Abramson had obtained notarized authorization from the individuals concerned, for otherwise the records could be exempt from disclosure on privacy grounds under the FOIA's Exemptions 6 and 7(C) (Pet. 5a).

Abramson, assuming his initial request had been too specific, filed a new request for all such information pertaining to elected officeholders transmitted between 1969 and 1974. This request was denied for failure to reasonably describe the records sought (Pet. 6a).

Abramson appealed both denials unsuccessfully and brought suit in the U.S. District Court for the District of Columbia in 1977 (Pet. 7a). After suit was filed, the Bureau reprocessed both requests and provided Abramson with 84 pages of documents, some intact and some with material deleted, principally on the basis of Exemption 7(C) (investigatory records compiled for law enforcement purposes to the extent that disclosure would constitute an unwarranted invasion of privacy) (Pet. 7a). However, for reasons nowhere explained in the record, the FBI no longer asserted that personal privacy would be invaded within the meaning of Exemption 6.

As the case progressed, Abramson decided to press for disclosure of only some of the deleted items, specifically, the items deleted from 64 pages of records known collectively as "Document No. 3" (Pet. 10a). Those documents consist of (1) a cover letter from J. Edgar Hoover to John

D. Ehrlichman dated October 6, 1969, which transmitted memoranda concerning 11 named individuals in response "to your name check request concerning Cesar Estrada Chavez and some other individuals" (J.A. 29); (2) the FBI's "name check" summaries on ten of the 11 individuals and, in the case of John Kenneth Galbraith at least, copies of earlier FBI summaries forwarded to the White House at its request (J.A. 31-32); and (3) a copy of an article written by John Kenneth Galbraith, a Vietnam Moratorium Committee advertisement in the New York Times (J.A. 33-36), and a typed list of certain individuals whose names appeared on that advertisement (J.A. 17).

The district court denied the FBI's first motion for summary judgment with respect to those items withheld under Exemption 7(C), noting that the Bureau had failed to show that the "records were compiled for 'law enforcement' rather than political purposes" (Pet. 33a).

The FBI then submitted a second affidavit (J.A. 13-27) and again moved for summary judgment. With respect to the Exemption 7(C) claim, the court found that there had been "absolutely no showing that these particular records were compiled for law enforcement purposes. Accordingly, the defendants have failed to meet their burden . . ." on that point (Pet. 27a). However, the district court held that disclosure of certain material would constitute an unwarranted invasion of personal privacy under clause (C) of Exemption 7 and entered judgment for the Bureau on that point (Pet. 28a).[1]

Respondent then appealed only the Exemption 7(C) ruling to the court of appeals, which concluded that the lower

[1]Certain paragraphs on two pages were deleted on Exemption 1 (classified records) grounds, and the court entered judgment for the FBI on this point (Pet. 27a). In addition Abramson did not challenge several deletions made on Exemption 7(D) grounds.

court had misapplied the exemption and held that privacy could be invoked to prevent disclosure under that Exemption only if the agency made a threshold showing that the records in question were in fact "investigatory records compiled for law enforcement purposes." Since the FBI had failed to make that showing, that was dispositive (Pet. 11a-18a).

A new issue emerged in the court of appeals, namely, the exempt status of certain "attachments" to the name check summaries. The court of appeals, which did not examine the records at issue in this case, was apparently concerned whether these "attachments" constituted the "*original documents* from the FBI files compiled prior to the White House request, and whether they were originally compiled pursuant to a legitimate law enforcement investigation" (Pet. 21a-22a) (emphasis in the original). The court remanded this issue to the district court to examine the contents of these "attachments" to see if they are exempt under Exemption 7(C) (Pet. 22a).[2]

SUMMARY OF ARGUMENT

The court of appeals correctly interpreted Exemption 7(C) of the Freedom of Information Act, 5 U.S.C. § 552(b)(7)(C), as requiring an agency to make two separate showings to qualify a document for that Exemp-

[2]It is unclear exactly what documents the court of appeals thought constituted "attachments," *i.e.*, whether it meant the pre-1969 name check summaries previously sent to the White House, all records in Document No. 3 other than the name check summaries, or something else. Furthermore *amicus* understands that the litigants hold conflicting views on the interpretation of that ruling. *Amicus* has reviewed the FBI's affidavit specifying where deletions were made from the 64 pages in Document No. 3 which were disclosed to Abramson (J.A. 13-27), and it does not appear that any of the records from which deletions were made are raw FBI investigatory files.

tion: (1) is the requested record both "investigatory" and "compiled for law enforcement purposes"? and (2) if that threshold requirement is met, would disclosure of the record result in an "unwarranted invasion of personal privacy"? Because the Federal Bureau of Investigation failed to meet the threshold requirement in this case, the court of appeals correctly ruled that the requested records could not be withheld under Exemption 7(C).

The Bureau argues that the court of appeals erred because Congress intended to exempt "information" from disclosure under Exemption 7, even if that information is contained in a record which was not compiled for law enforcement purposes. This argument is rebutted by the plain meaning of the FOIA, which consistently uses the word "records" throughout and which, in Exemption 7, modifies the word "records" by requiring that they be compiled for a specific purpose, *i.e.*, law enforcement.

When, as here, information from records which are claimed to be exempt as law enforcement records is recompiled into a new record, that record must be examined on its own terms, without regard to where the information contained therein originated. If the new record is itself an "investigatory record compiled for law enforcement purposes," it may be withheld under Exemption 7. When the new record is not compiled for law enforcement purposes, however, Exemption 7 is not available, although the agency may still seek to avail itself of any of the other eight FOIA exemptions.

This approach is required by the language and intent of the FOIA and allows agencies to use Exemption 7 only when the records they seek to shield were prepared for law enforcement purposes. What the Bureau is arguing, in effect, is that this Court should create a general privacy ex-

emption under Exemption 7(C) broader than that created by Congress. Exemption 7(C) is available to protect privacy if the records in issue are "investigatory records compiled for law enforcement purposes." Exemption 6 protects a "clearly unwarranted invasion of privacy" when "personnel and medical files and similar files" are at issue. Since the FOIA has explicitly struck the balance between public access and personal privacy, this Court should not substitute its judgment for that of Congress.

ARGUMENT

The only issue in this case is whether Exemption 7 of the Freedom of Information Act allows an agency to withhold records which were compiled not for law enforcement purposes, but for political purposes.

Under Exemption 7(C), an agency may withhold "investigatory records compiled for law enforcement purposes, but only to the extent that production would. . . (C) constitute an unwarranted invasion of privacy . . . ." In the instant case, the court of appeals correctly held that since the FBI had failed to make the threshold showing that the records had been "compiled for law enforcement purposes," it could not withhold the document under Exemption 7.

In the only previous case in which this Court examined the language and history of Exemption 7, it noted that Congress had "carefully structured nine exemptions from the otherwise mandatory disclosure requirements in order to protect specified confidentiality and privacy interests." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 220-21 (1978). Exemption 7 is "carefully structured" to require a two-part inquiry: (1) are the records in issue both "investigatory" and "compiled for law enforcement pur-

poses"? and (2) if so, would disclosure result in one of the six harms specified in clauses (A) through (F) of that Exemption?

This was the interpretation urged on federal agencies by the Attorney General in his memorandum on how to implement the 1974 amendments to the FOIA:

> Once it is determined that [the threshold requirements] of "investigatory records" [and] "compiled for law enforcement purposes" [have been met], the next question is whether release of the material would involve one of the six types of harm specified in clauses (A) through (F) of amended Exemption 7.

Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act 6-7 (Feb. 1975). This approach has been adopted in several Circuits. *See, e.g., Lesar v. U.S. Dep't of Justice,* 636 F.2d 472, 486 (D.C. Cir. 1980); *Committee on Masonic Homes v. NLRB,* 556 F.2d 214, 218 (3d Cir. 1977); *Rural Housing Alliance v. U.S. Dep't of Agriculture,* 498 F.2d 73, 80-81 (D.C. Cir. 1974); *Pope v. United States,* 599 F.2d 1383, 1386 (5th Cir. 1979); *but see Irons v. Bell,* 596 F.2d 468 (1st Cir. 1979); *Kuehnert v. FBI,* 620 F.2d 662 (8th Cir. 1980), discussed *infra* at pp. 11-12.

The Bureau argues that even though the 1969 name check summaries were not compiled for a law enforcement purpose, they are nonetheless exempt because they were drawn from legitimate law enforcement records and that this exemption "passes through" to any recompilation. The argument, differently stated, is that the court of appeals erred in limiting the scope of Exemption 7 to "documents" or "records" instead of the "information" which may be contained in them (Pet. Br. 15-22).

In addition to the plain meaning of Exemption 7's introductory phrase, this argument was answered by this Court last year in *Forsham v. Harris,* 445 U.S. 169, 185 (1980), where it observed that the FOIA "deals with 'agency records,' not information in the abstract."

The Bureau's argument is also directly contrary to the legislative history of the 1974 FOIA amendments, in which Congress limited Exemption 7 only to "records" and then only if one of six specified harms could be proven. In its original version, Exemption 7 allowed withholding of "investigatory *files,*" Pub. L. No. 89-487, 80 Stat. 251 (emphasis added). Early cases which interpreted this exemption applied a "harm" analysis, asking whether the disclosure of particular records would actually impede law enforcement efforts by exposing secret investigative techniques, or by interfering with enforcement proceedings in some specific way. *See, e.g., Bristol-Myers Co. v. FTC,* 424 F.2d 935, 939-40 (D.C. Cir.), *cert. denied,* 400 U.S. 824 (1970); *Wellford v. Hardin,* 444 F.2d 21, 23-24 (4th Cir. 1971).

Beginning in 1973, however, a series of cases from the D.C. Circuit departed from this approach and held that Exemption 7 was applicable *per se* as long as the requested records were contained in a properly designated "investigatory file." *See Weisberg v. Dep't of Justice,* 489 F.2d 1195 (D.C. Cir. 1973) *(en banc), cert denied,* 416 U.S. 993 (1974); *Aspin v. Dep't of Defense,* 491 F.2d 24 (D.C. Cir. 1973); *Ditlow v. Brinegar,* 484 F.2d 1073 (D.C. Cir.), *cert. denied,* 419 U.S. 974 (1974); *Center for Nat'l Policy Review on Race and Urban Issues v. Weinberger,* 502 F.2d 370 (D.C. Cir. 1974).

These cases were decided after the Senate Judiciary Committee had prepared a bill which made comprehensive

changes in the FOIA, though not in Exemption 7. When that bill reached the Senate floor, the D.C. Circuit's cases interpreting Exemption 7 were sharply criticized by Senator Hart as erecting:

> a stone wall . . . . The court would have the exemption applied without the need of the agency to show why the disclosure of the particular document should not be made.
>
> That, we suggest, is not consistent with the intent of Congress when it passed this basic act in 1966.

House Comm. on Government Operations & Senate Comm. on the Judiciary, *Freedom of Information Act and Amendments of 1974 (P.L. 93-502); Source Book: Legislative History, Texts, and Other Documents* 332-33, 94th Cong., 1st Sess. (Jt. Comm. Print)(1975)(remarks of Senator Hart)(hereinafter *1975 Source Book). See also id.* at 335 (remarks of Senator Kennedy).

On the floor, Senator Hart introduced an amendment to limit the scope of Exemption 7 and thereby overrule the D.C. Circuit cases. His amendment had two key features: (1) the phrase "investigatory files" was narrowed to "investigatory records," and (2) such "investigatory records" could be withheld only if the agency could prove that disclosure would result in one or more of six enumerated harms now specified in the Exemption. As this Court observed in *Robbins Tire, supra,* after reviewing the history of this amendment, Congress's aim was "to avoid the possibility of impermissible 'commingling' by an agency's placing in an investigatory file material that did not legitimately have to be kept confidential." 437 U.S. at 229-30. This Court further observed that by requiring an agency to cite the specific harms which could flow from disclosure, the "'wooden[] and mechanical[]' approach

taken by the D.C. Circuit and disapproved by Congress would thereby be eliminated." *Id.* at 230.

This legislative history also makes clear that the proper starting point in Exemption 7 cases is the "record" being requested and not the nature of the agency, as several cases cited by the Bureau (Pet. Br. 26-27) seem to hold. *Irons v. Bell, supra; Kuehnert v. FBI, supra.*

These cases misread the words of the statute and overlook Congress's intent to limit disclosure under Exemption 7 to cases where disclosure of particular *records* would cause harm, regardless of the duties of the agency in question. Indeed, on the Senate floor, the Hart amendment was opposed on almost the very ground adopted in these decisions — that the FBI's files are "for one purpose only, and that is a law enforcement purpose." *1975 Source Book* at 341 (remarks of Senator Hruska).

This unsuccessful opposition demonstrates quite clearly that the fact that the FBI is a law enforcement agency and the fact that most of its records are compiled for law enforcement purposes is only the beginning of the inquiry.

Indeed, Congress intended the phrase "investigatory records compiled for law enforcement purposes" to be quite narrow and not to include, for example, all FBI records. Thus at the time of the 1974 amendments, Congress was well aware of the fact that records of investigatory agencies might not be "compiled for law enforcement purposes," and supporters of the amendment to Exemption 7 made it clear that any such records should not be withheld under Exemption 7. For example, Senator Kennedy, the floor manager of the 1974 amendments stated:

> . . . In the case where NBC newsman Carl Stern [367 F. Supp. 1316 (D.D.C. 1973)] took the FBI to court to obtain documents relating to counterintelligence programs, the Bureau took

the position that those documents were "investigatory files." The FBI argued this point strongly, but a Federal Judge even more forcefully found it lacking in substance. The judge responded:

"The government has not demonstrated that the requested records, which are couched in broad generalities, relate to any ongoing investigation or that disclosure would jeopardize any future law enforcement proceedings."

No doubt this is just the kind of document — revealing a program that earlier this week the Justice Department itself characterized as involving "practices that can only be considered abhorrent in a free society" — that the FBI would find impractical to review and unlikely to be available for release. Yet this is also precisely the kind of Government activity which the public has the greatest interest in knowing about.

1975 Source Book at 440.

If Congress wanted the FOIA to protect law enforcement agencies, it could have written the statute to do just that, as it did in the general exemption section of the Privacy Act, 5 U.S.C. § 552a(j)(2), which Congress passed at the same time as the 1974 FOIA amendments (general exemption for records "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws . . ."). That it did not do so further evidences the error of the FBI's contentions.

Although the FOIA's Exemption 7 says "records," the Bureau argues that Congress intended to protect "information" from disclosure and claims that the court of ap-

peals' decision produces an absurd result. It argues that photostatic copies of an investigatory record would remain exempt under Exemption 7, while information in such records which is later summarized in a new document would lose its exempt status. Such a distinction, the Bureau asserts, "makes no sense in light of either the disclosure purposes of the FOIA or the purposes of the exemption at issue here" (Pet. Br. at 21).

To the contrary, limiting Exemption 7 to "investigatory records" and not the "information" derived from them makes sense for a variety of reasons and is consistent with what Congress intended in the FOIA. The principal reason is that the key phrase in Exemption 7 for this case is "compiled for law enforcement purposes." *Amicus* believes that when an agency summarizes documents from its files, it is "compiling" a new record, and the pertinent question for purposes of Exemption 7 becomes "is this new record being compiled for law enforcement purposes?" Applying this analysis to the instant case, for example, when the FBI in 1969 wrote a new name check summary regarding John Kenneth Galbraith, photocopied earlier summaries and fastened them together for transmission to the White House (J.A. 32), it was "compiling" a new record. If this new document was compiled for a law enforcement purpose, *e.g.*, a White House security clearance, then every part of this compilation would meet the threshold test for withholding under Exemption 7. If, however, the new record was not compiled for a law enforcement purpose, as the district court found in this case, then no part of that new compilation could be withheld under Exemption 7.

Such an approach is supported by the decision of this Court in *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975), in which an admittedly exempt document lost its

status when it was incorporated into a federal agency decision which was required to be made public. Similar rulings have also been made by other courts in other similar circumstances. *See e.g., Niemeier v. Watergate Special Prosecution Force,* 565 F.2d 967 (7th Cir. 1977); *Simpson v. Vance,* 648 F.2d 10 (D.C. Cir. 1980).

At a minimum, *amicus* suggests that the court of appeals' interpretation "makes sense" even if this Court concludes that only summaries and not photostatic copies of original records can be "compiled" within the meaning of Exemption 7. Under this analysis the name check summaries which were prepared in 1969 were "compiled" for political purposes and are not exempt under Exemption 7. This analysis leaves open, however, the question of whether *pre-1969* name check summaries (such as the ones prepared on John Kenneth Galbraith, which were presumably copied from the files and fastened to the 1969 summary) were "compiled for law enforcement purposes" at the time they were written in 1961 and 1965 (J.A. 32). If they were – and the record is not clear on this point (Pet. Br. 29) – then only the 1969 summaries are disclosable in their entirety at this stage of the proceedings, and the issue of whether these earlier summaries were properly "compiled for law enforcement purposes" should be resolved on remand.

These interpretations not only effectuate the plain meaning of Exemption 7 and its legislative history, but they also have the effect of putting an agency on notice that the only way to safeguard its investigatory records is to ensure that these records are, in fact, compiled and used for law enforcement purposes. This interpretation thus takes into consideration the concern expressed in Congress during the 1974 debate about past "abuses" by law enforcement agencies and the fact that "case after case after case after case has been thrown out because the law en-

forcement and intelligence communities acted illegally." *1975 Source Book* at 348 (remarks of Senator Weicker). *See also id.* at 440 (remarks of Senator Kennedy, quoted *supra* at 11-12). Although it was observed that the Hart amendment would make the job of the FBI and similar agencies more difficult, Senator Weicker added that "the far greater danger lies behind closed doors and in locked files." *Id.* at 346.

It is also important to note that even if a record loses its status under Exemption 7, it may possibly be withheld under another Exemption. Thus, the court of appeals' analysis "makes sense" even when applied to the two examples given by the FBI to illustrate the alleged "seriousness of the potential problem" if the judgment is affirmed (Pet. 16-17).

The FBI notes that it sends information to the State Department where the data may be included in documents used to process visa applications or else be sent to U.S. embassies to reassure foreign governments that they are dealing with reputable U.S. business people (Pet. 16-17). It may be true that the recompilations are no longer exempt as law enforcement records, but they may be protected from disclosure on other grounds. For example, government-to-government communications are frequently classified and thus may be withheld under Exemption 1. It is also possible that the new records may be withheld under Exemption 5, which deals with interagency memoranda, or under Exemption 6, which protects "personnel and medical files and similar files" involving a "clearly unwarranted invasion of personal privacy."

As for summaries of FBI records on criminal activities which are sent to Congressional committees (Pet. 17), it is possible that the summaries are themselves "compiled for

law enforcement purposes" and non-disclosable under Exemption 7 if they are provided to help Congress oversee the administration of criminal laws. Indeed, in one Exemption 5 case, it was held that internal agency records remained exempt even after being disclosed to a Member of Congress. *Murphy v. Dep't of the Army,* 613 F.2d 1151 (D.C. Cir. 1979).

The real problem in this case is that the FBI is attempting to assert that personal privacy should be protected under Exemption 7(C), even though the records were not compiled for law enforcement purposes. Under the circumstances, a privacy claim should be made, if at all, under Exemption 6. For reasons not entirely clear to *amicus,* the Bureau raised Exemption 6 when respondent made his first FOIA request but chose not to rely upon it thereafter. By litigating the case in this fashion, the Bureau put itself in a position where it must ask this Court to construe Exemption 7(C) as a general privacy exemption. Such a holding would be contrary to the plain meaning of the statute and Congress's intention that the exemptions be considered exclusive and construed narrowly. *Dep't of Air Force v. Rose,* 425 U.S. 352, 361 (1976).

In other cases, this Court and others have confined themselves to construing only the particular exemptions raised by the parties, leaving to the district courts the task of determining whether other exemptions may also bar disclosure. In *NLRB v. Sears, Roebuck & Co., supra,* this Court determined the availability of certain records under Exemption 5 and remanded for a determination as to the applicability of Exemption 7. Similarly, in *Sims v. CIA,* 642 F.2d 562 (D.C. Cir. 1980), the only issue decided was whether the CIA could withhold certain records under Exemptions 3 and 6; the court resolved those claims while

noting that its decision did not address the availability of the documents under Exemption 1, which the agency had not asserted. In *Simpson v. Vance, supra,* 648 F.2d at 17, the State Department sought to protect records on Exemption 6 and not Exemption 1 grounds. The court refused to expand Exemption 6 to "fit a square peg in a round hole," as sought by the Government there and, we submit, here.

Finally, there is a very practical reason for upholding the court of appeals decision that Exemption 7 protects "records" and not "information." If this Court were to rule that "information" is what Congress sought to withhold and that Exemption 7 (or any other exemption, for that matter) passes through when exempt "information" is recompiled into another record, the FOIA would become administratively unworkable. Upholding the FBI's position would permit agency employees to claim not only that the record is exempt at the time of the request, but also that some of the "information" contained in it (however "information" is defined) came from another document where it might have been exempt. Such a holding would not only impose a crushing burden on courts when agencies seek to withhold records under Exemption 7, but it would also frustrate Congress's intention that the FOIA provide strict guidelines specifying when certain records can be withheld. The difficulty which an agency (as well as a reviewing court) can have in assessing whether information was derived from properly exempt material is illustrated in *Alfred A. Knopf, Inc. v. Colby,* 509 F.2d 1362 (4th Cir.), *cert. denied,* 421 U.S. 992 (1975).

In short, the court of appeals correctly held that since it is undisputed that the name check summaries and other documents were not compiled for law enforcement purposes, petitioners cannot continue to withhold the deleted portions of them. This decision gives effect to the plain

meaning of Exemption 7, the pro-disclosure thrust of the FOIA, and the legislative history of the 1974 FOIA amendments. This Court should not engraft onto Exemption 7 a general privacy exemption or stretch this Exemption beyond the boundaries established by Congress.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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